

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 08-3976
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO)
WASTE MANAGEMENT OF OREGON, INC. FOR) Introduced by Michael Jordan,
DELIVERY OF PUTRESCIBLE WASTE FROM THE) Chief Operating Officer, with the
TROUTDALE TRANSFER STATION TO THE) concurrence of David Bragdon,
COLUMBIA RIDGE LANDFILL AND RIVERBEND) Council President
LANDFILL)

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Waste Management of Oregon, Inc. ("WMO") holds a Metro Solid Waste Facility Non-System License No. N-001-06, which expires on December 31, 2008; and

WHEREAS, WMO has applied for the renewal of the non-system license to deliver putrescible waste from the Troutdale Transfer Station to the Columbia Ridge Landfill and the Riverbend Landfill for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Section provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

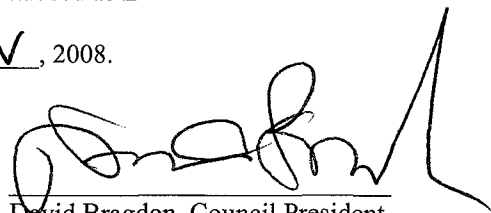
WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

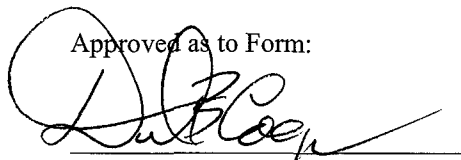
WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Ordinance; now therefore,

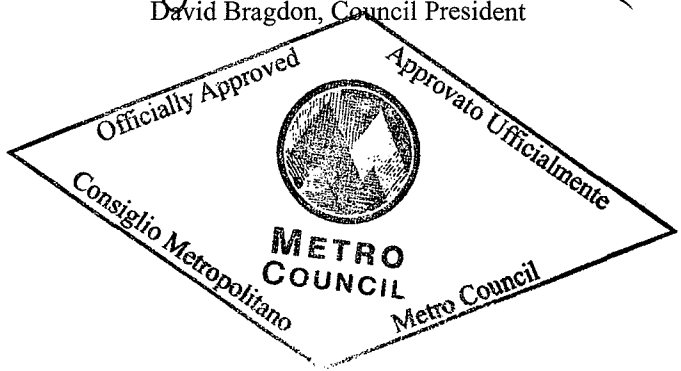
THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of WMO is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Ordinance.
2. The Chief Operating Officer is authorized to issue to WMO a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 6 day of Nov, 2008.


David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney



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METRO

**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

No. N-001-08

LICENSEE:
Waste Management of Oregon, Inc. dba Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060
CONTACT PERSON:
Dan Wilson Phone: (503) 667-5264 Fax: (503) 667-6237 E-mail: danwilson@wm.com
MAILING ADDRESS:
Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060

ISSUED BY METRO:

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste generated within the Metro boundary and received at Troutdale Transfer Station in accordance with Metro Solid Waste Facility Franchise No. F-001-08.
2	CALENDAR YEAR TONNAGE LIMITATION
	Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 70,000 tons per calendar year of the waste described in Section 1 of this license. This license does not increase the total tonnage that the Licensee is authorized to accept under Metro Solid Waste Facility Franchise No. F-001-08.
3	NON-SYSTEM FACILITIES
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility:</p> <p style="padding-left: 40px;">Columbia Ridge Landfill 18177 Cedar Springs Lane Arlington, OR 97812</p> <p>And, during certain unusual circumstances and emergency situations as described in Section 7(a) of this license, the Licensee is authorized to deliver the above referenced waste to the following non-system facility:</p> <p style="padding-left: 40px;">Riverbend Landfill 13469 SW Highway 18 McMinnville, OR 97128</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on January 1, 2009 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.



5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.

6	RECORD KEEPING AND REPORTING
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facilities described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facilities:</p> <ul style="list-style-type: none">i. Ticket or weight slip number from the non-system facility;ii. Material category designating the type of material transferred to the non-system facility;iii. Date the load was transferred to the non-system facility;iv. Time the load was transferred to the non-system facility;v. Net weight of the load; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3, above.</p>



7	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) The Licensee is authorized to deliver putrescible waste to the Riverbend Landfill only during certain unusual circumstances and emergency situations, such as the closure of Interstate 84 or the temporary breakdown of a compactor at the Troutdale Transfer Station, which would prevent the Licensee from delivering such waste to the Columbia Ridge Landfill.(b) If the Licensee delivers putrescible waste to the Riverbend Landfill as provided above in Section 7(a), the Licensee shall:<ul style="list-style-type: none">i. Report the unusual circumstance or emergency situation to Metro within 12 hours of its discovery; andii. Notify Metro in writing if such delivery of waste to the Riverbend Landfill continues for more than three consecutive business days. The written notification required by this section shall include a detailed description of the particular circumstance resulting in such deliveries and its expected duration.(c) The permissive transfer of solid waste to the non-system facilities, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(d) This license shall be subject to amendment, modification, or termination by Metro's Chief Operating Officer (the "COO") in the event that the COO determines that:<ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued this license;ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, Inc.; oriii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facilities listed in Section 3.(e) This license shall, in addition to subsections (d)(i) through (c)(iii), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.(f) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.(g) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes those facilities to accept the waste described in Section 1 of this license.



	<p>(h) This license authorizes the delivery of solid waste to the facilities listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than those specified in this license is prohibited unless authorized in writing by Metro.</p>
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8	COMPLIANCE WITH LAW
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>

9	INDEMNIFICATION
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3976 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO WASTE MANAGEMENT OF OREGON, INC. FOR DELIVERY OF PUTRESCIBLE WASTE FROM THE TROUTDALE TRANSFER STATION TO THE COLUMBIA RIDGE LANDFILL AND RIVERBEND LANDFILL

October 17, 2008

Prepared by: Warren Johnson

BACKGROUND

Description of the Resolution

In January 2007, Waste Management of Oregon, Inc. (WMO) was granted a non-system license (NSL) to deliver a maximum of 65,000 tons per calendar year of solid waste, consisting primarily of putrescible waste, from the Troutdale Transfer Station (TTS) to the Columbia Ridge Landfill (CRLF) in Arlington, Oregon, and the Riverbend Landfill (RLF) in McMinnville, Oregon. WMO needed an NSL to deliver putrescible waste from TTS to CRLF because the landfill is not designated, as provided in Metro Code Section 5.05.030(a)(6) and Metro's designated facility agreement (Contract No. 902859), to accept putrescible solid waste from the Metro region. The existing NSL (No. N-001-06) also authorized the delivery of solid waste to RLF in the case of emergency situations, such as the closure of Interstate 84, that would prevent the delivery of waste to CRLF. The license commenced on January 1, 2007 and will expire on December 31, 2008. On September 2, 2008, WMO submitted to Metro an application to renew this NSL.

Approval of Resolution No. 08-3976 will authorize the Chief Operating Officer to issue a renewed NSL to WMO to deliver a maximum of 70,000 tons per calendar year of putrescible solid waste to the CRLF and, under certain unusual circumstances and emergency conditions, to the RLF. This proposed NSL would replicate the existing authority with the exception that the tonnage limitation of the NSL has been increased by 5,000 tons to match it with the limit stipulated in TTS' Solid Waste Facility Franchise No. F-001-08. In addition to the tonnage increase, the proposed NSL clarifies the conditions under which WMO may deliver waste to the RLF.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed NSL.

2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The CRLF is a general-purpose landfill that began accepting waste in January 1990. The landfill has synthetic and clay liner systems that are consistent with federal Subtitle D regulations. Since beginning operation, the landfill has been only filling lined cells and operating with the environmental controls required by the Oregon Department of Environmental Quality (DEQ). The landfill has no known history of landfilling waste that poses a risk of environmental contamination.

The RLF first came into use during the mid-eighties. When RLF became a Subtitle D landfill in 1993, the original unlined cells were capped. Since 1993, the landfill has been filling only lined cells and operating with the environmental controls required by the DEQ. The landfill deliberately accepted asbestos containing materials earlier in its operation but has not done so for the past ten years. In 2006, RLF inadvertently accepted and landfilled a load of bagged subflooring and tile containing asbestos in violation of its DEQ permit. Other than that, Metro staff has not found any evidence that the landfill has accepted wastes that it was not permitted by DEQ to accept. It appears that the future risk of environmental contamination is likely to be minimal, provided that the synthetic liner system remains intact, leachate is collected and properly treated, groundwater is monitored for contamination migration, and the DEQ is diligent in its oversight of the facility.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

CRLF and RLF are permitted by the DEQ. On October 6, 2008, Metro staff received e-mail confirmation from John Straughen, Environmental Engineer with the DEQ's Eastern Region Office, that the CRLF is in compliance with federal, state and local requirements and has a good compliance record with public health, safety and environmental rules and regulations.

Metro staff has also received verbal confirmation that the DEQ considers the RLF to be a well-run facility that is in compliance with state requirements. In the past five years RLF has received one notice of non-compliance from the DEQ for elevated levels of suspended solids in stormwater discharge.

Recently, property owners neighboring RLF have alleged to Metro that certain portions of the landfill are currently in violation of Yamhill County's flood plain elevation requirements. Metro staff has been unable to obtain from Yamhill County any form of written verification regarding the compliance status of RLF. However, it is expected that more information regarding this matter will become available in December 2008 when the Metro Council intends to consider adoption of an ordinance that would list RLF as a designated facility in the Metro Code.

Although Metro staff has not yet verified RLF's compliance status with respect to Yamhill County's requirements, staff recommends that the proposed NSL renewal include RLF as a contingency facility pending further consideration by the Metro Council. The proposed NSL renewal would authorize WMO to deliver solid waste from TTS to RLF only as a contingency measure during unusual circumstances that would prevent the delivery of waste to CRLF. Staff recommends renewing the licensee's existing authority in order to minimize potential disruption to the solid waste system.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

Both CRLF and RLF use operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The waste subject to the proposed license is putrescible solid waste, which has little potential for recovery. Approval of this NSL renewal is therefore unlikely to impact the region's recycling and waste reduction efforts.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

Metro has committed to deliver 90 percent of the total tons of putrescible solid waste that Metro delivers to general purpose landfills to landfills operated by Metro's waste disposal contract operator, WMO. The waste subject to the proposed license is to be delivered to the CRLF and the RLF, which are WMO facilities. Thus, renewal of this NSL will not conflict with Metro's disposal contract or any of its existing contractual arrangements.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations; and*

Within the last five years, TTS received one Notice of Violation for failing to maintain the Metro-required recovery rate at the TTS. On September 23, 2005, Metro issued Notice of Violation No. NOV-148-05 to WMO for dropping slightly below 25-percent recovery for the month of August 2005. Metro calculated the recovery rate based on a 12-month rolling average. There was no penalty associated with this minor recovery rate violation. Metro afforded WMO an opportunity to abate the violation by taking immediate corrective action to improve material recovery operations at TTS.

TTS is currently in compliance with its Metro-issued franchise and NSL. With the exception of the above referenced violation, TTS has had no violations related to public health, safety or environmental regulations. Additionally, TTS has not had any significant compliance issues regarding other Metro requirements in the last five years.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

TTS currently operates under authority of Metro Solid Waste Facility Franchise No. F-001-03. On September 25, 2008, the Metro Council adopted Ordinance No. 08-1192 authorizing the Chief Operating Officer to issue a renewed Solid Waste Facility Franchise (No. F-001-08) to TTS. The renewed franchise, which becomes effective on January 1, 2009, stipulates that TTS shall not accept more than 70,000 tons of putrescible waste originating from inside the Metro region within each calendar year. The issuance of the proposed NSL authorizing the delivery of up to 70,00 tons of putrescible solid waste to CRLF and RLF does not increase the total tonnage that TTS is authorized to accept under the terms of the renewed franchise.

The moratorium on applications for new NSLs for mixed putrescible waste does not apply to this license renewal application.

3. Anticipated Effects

The effect of Resolution No. 08-3976 will be to issue a two-year NSL authorizing TTS to deliver up to 70,000 tons per calendar year of putrescible solid waste to the CRLF and, under certain unusual circumstances and emergency conditions, to the RLF. The proposed NSL includes a tonnage limitation of

70,000 tons (which is a 5,000-ton increase above the existing license) in order to match it with the limit stipulated in TTS' Solid Waste Facility Franchise No. F-001-08.

4. Budget Impacts

Both CRLF and RLF are owned and operated by Waste Management; this NSL will not impact Metro's obligations under its disposal contract. The regional system fee and excise tax will continue to be collected on in-Metro waste delivered to the CRLF and RLF under the authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. 001-06). Therefore, the financial impact has already been factored into the budget.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-3976, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035 and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

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